

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9275  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying him emergency assistance/general assistance (EA/GA) for temporary housing. The issue is whether the petitioner could "reasonably have avoided" his present circumstances within the meaning of the pertinent regulations.

## FINDINGS OF FACT

Prior to mid-June, 1989, the petitioner lived with his wife and two teenage children in a rental apartment they had occupied since December, 1987. The rent on the apartment was \$225.00 per month, plus utilities.

In March, 1989, the petitioner's landlord served on the petitioner notice to vacate the apartment, claiming rent arrearages in the amount of \$2,910.00. The petitioner did not contest this action, and on May 18, 1989, a default judgement was entered against him for eviction and \$3,155.00 in damages.

A writ of execution was issued a few weeks later and the petitioner and his family vacated the apartment. Since that time the petitioner and his wife have been living with friends. Their children have been staying with other friends.

On or about June 19, 1989, the petitioner applied for EA/GA for temporary housing until he and his family could locate a permanent rental. The Department denied this application determining that the petitioner had had the means to pay his rent and that, therefore, the petitioner could "reasonably have avoided" his present lack of housing (see infra). A hearing in this matter was held on an "expedited" basis (see Procedures Manual § P 2610-D) on June 28, 1989. At that time this hearing officer orally affirmed the Department's decision.

Based on the testimony at the hearing it is found that between December, 1988, and March, 1989, the petitioner was employed full-time and had net income (from employment, food stamps, and fuel assistance) that averaged over \$1200.00 per month. At most, the total of the household's reasonable and necessary expenses, not including rent, during this same period was under \$950.00 per month.<sup>1</sup> The ANFC "need standard" (see infra) for a family of four is \$717.00 a month plus \$250.00 for housing. Given the fact that his income exceeded his claimed expenses by at least \$250.00 per month, petitioner offered no explanation whatsoever for his failure to pay his rent during the period in question. Thus, it must be found that the petitioner had the means to pay his rent in full each month, and that his failure to do so was within his control. Therefore, it cannot be found that the petitioner "could not reasonably have avoided" his present situation (see infra).

ORDER

The Department's decision is affirmed.

REASONS

Welfare Assistance Manual (WAM) §§ 2613.2 (GA) and 2813.2 (EA) include the following provisions:

Temporary Housing

Temporary housing is intended to provide short term shelter for applicants who are involuntarily without housing through circumstances in which the applicant could not reasonably have avoided the situation and for whom permanent housing or alternative arrangements are not immediately available ("could not reasonably have avoided" is subject to the limitations in 2602(b)).

WAM § 2602(b)<sup>2</sup>, referred to parenthetically in the above regulation, provides as follows:

A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.

In past cases (see e.g., Fair Hearing No. 7728) the board has held that in applying § 2602(b) (supra) the burden of proof regarding "fault" in cases of non-payment of rent shall be determined by whether the GA applicant's income was above or below the comparable ANFC "standard of need" (see

WAM § 2245). In this case, the petitioner conceded at the outset that his income during the period in question exceeded the ANFC standard and that, therefore, he bore the burden of proving that his non-payment or rent was caused by spending his income on other household necessities. As noted above, he has not met this burden. The evidence establishes that the petitioner did have a "sufficient financial ability to pay" his rent. Furthermore the petitioner failed to show that he used his income during the period in question "to cover other basic necessities". Therefore, it must be concluded that the petitioner has not met the requirements of §§ 2613.2/2813.2. Thus, he is ineligible for GA and EA for temporary housing.<sup>3</sup>

FOOTNOTES

<sup>1</sup>Under this total some of the petitioner's claimed expenses seemed inflated (e.g., \$80.00 a month for "laundry"), and some were of dubious necessity (e.g., \$150.00 a month for cigarettes).

<sup>2</sup>In the EA regulation (2813.2) the reference is to § 2802(b). Sections 2602(b) and 2802(b) are identical.

<sup>3</sup>The petitioner and his family are now income-eligible for other types of EA/GA, and they appear to qualify for permanent housing (see §§ 2613.1 and 2813.1), another type of GA/EA benefit eligibility for which is not contingent upon a lack of "fault" on the part of the applicant. The petitioner was advised (and is advised here again) that when and if he locates permanent housing he should reapply for assistance.

# # #